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From Pres. Angell, Jan 16, 1901

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SERIAL PUBLICATIONS. No. 5.

A Brief Review of the Legislation Against Corrupt Practices at Elections

BY
ROGER SHERMAN
OF THE CHICAGO BAR

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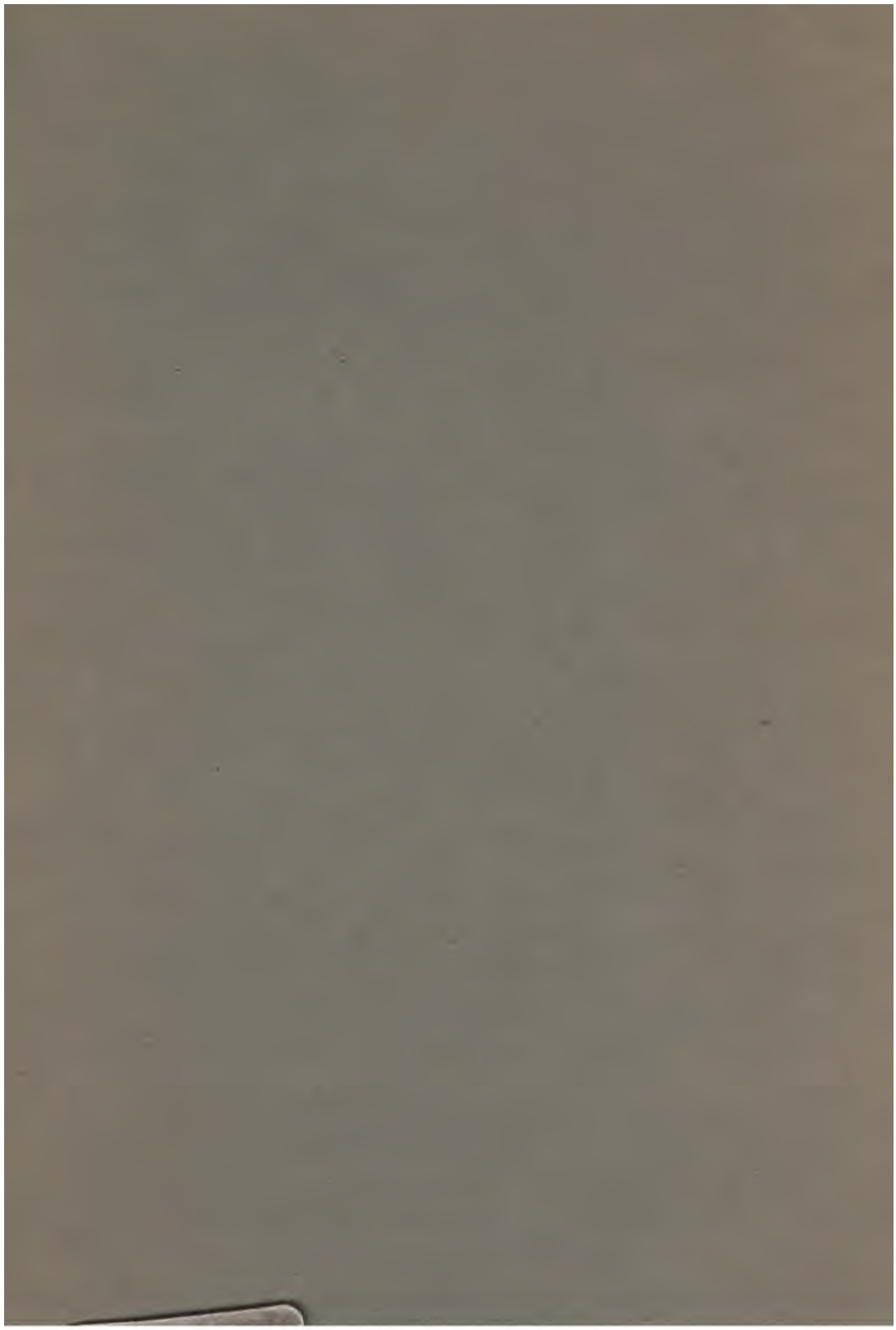

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A BRIEF REVIEW OF THE LEGISLATION AGAINST CORRUPT PRACTICES AT ELECTIONS.

BY ROGER SHERMAN,
OF THE CHICAGO BAR.

Delivered at a Meeting of the Club, December 9, 1898.

MR. PRESIDENT AND GENTLEMEN:—The task that has been assigned me this evening is at once both simple and complex. It is simple that I am required to deal merely in facts of history. It is complex in this, that such legislation stretches over a period of some three hundred years and covers scores of pages in the statute books of England, Canada and the United States.

It is my purpose merely to outline for you the current of legislation —to sketch the development and the present status of the law on this subject. This I shall do briefly, trusting to the speakers who follow to fill in the outline with facts gleaned from a more thorough study of the subject and a riper experience.

Away back in the time of William and Mary, in 1695, an act was passed by the House of Commons in England to prevent charges and expenses in the elections of members of Parliament. From that time to the present, every period of a few years has seen the enactment of further legislation along the same line. Successively in the years 1729, 1809, 1827, 1852, 1854, 1868, 1872, 1883, 1895, and in other years, acts tending in the same direction have been passed by the English Parliament. The law of 1883 is at once the epitome of all the learning and experience acquired in England and the model for all of the States in this country that have enacted laws against corrupt practices. On this account its provisions should be explained somewhat at length.

It provides first against treating, defining that term to mean providing "meat or drink entertainment" for the purpose of influencing votes. Not only is the one who provides the entertainment guilty, but the elector who accepts is equally under the ban of the law. The term "corrupt practices" is defined to mean treating, undue influence, bribery and personation.

The law provides that the election of any candidate shall be absolutely void if the candidate is found personally guilty of corrupt prac-

tices (except treating or undue influence), or if such offenses have been committed with his knowledge or consent. He is further debarred forever from occupying a seat in the House of Commons. If he has committed such corrupt practices through his agents he is debarred from occupying a seat in the House of Commons for seven years. Punishment for different infractions of the law also includes hard labor in prison for a term of one or more years and a forfeiture of the right to hold office, register or vote. Illegal practices are stated to include payment for carriages, and railway fares, in conveying electors to or from the polls, and no person is permitted to let or rent carriages, horses or other conveyances to third persons for the use of electors in going to and from the polls. The law further provides that no payment shall be made for music, torches, flags, banners, cockades, badges or any other mark of distinction to be used by electors at or near the polling places, and that premises where liquor is sold shall not be used as committee rooms.

There is, however, a saving clause in the law, which provides that practices carried on without the knowledge or consent of the candidate and contrary to his orders shall not debar him and that it shall be a sufficient defense for him to show this and the additional fact that reasonable care was taken to prevent such infractions of the law.

On or before nomination day each candidate is obliged to declare in writing the name of someone who is to act as his election agent. As soon as the names of such agents are handed in the list is published. Each agent is permitted to appoint deputies, or sub-agents, as they are called. Then the agent in turn is obliged to declare and publish the list of such sub-agents. The candidate or his agent appoints every polling agent, every clerk, and every messenger employed at or about the polls. They also hire every committee room and contract for all the expenses of the campaign. Contracts for such expenses are not enforceable unless they are entered into by the candidate himself or his agent. All contributions to the campaign fund must be received by or sent to the candidate or his political agent. Claims for all expenses are absolutely void unless they are presented within fourteen days from the time the candidate is declared elected. Then the candidate or his agent must pay such claims within twenty-eight days after such announcement of election. After that date they can only be presented and allowed through a court of law. If they are approved by the court they are then allowed as a part of the legitimate expenses and may be paid as if presented within the specified time.

Each candidate is permitted to expend the sum of one hundred pounds for personal expenses. Every other item of campaign expense must be handled by and through the political agent. When the election is over the candidate is obliged to send a written statement of his personal expenses to his agent and within thirty-five days after the day on which the candidates are declared elected each agent has to transmit to the proper officer a schedule of expenses, including the following: Statement of all payments made by election agent; statement of personal expenses of the candidate; list of claims unpaid or disputed; schedule of all moneys or the equivalent received and the

names of the donors. Within seven days after the return of the agent's schedule the candidate must in the same manner present his schedule of personal expenses.

The failure to comply with these provisions makes the candidate liable, if elected, to forfeit his office and his right to vote, or to suffer a fine of one hundred pounds for each day he assumes to act officially. Falsifying either of these schedules is declared to be perjury. Sickness, absence from the city, death, etc., are considered excuses for not complying with the strict letter of the law in regard to the date for presentation of schedules, but application must be made to a court of competent jurisdiction for an order extending the time specified. When these schedules are handed in to the returning officer, he in turn is obliged to publish them in two newspapers in the burrough or county where the election is held, together with a notice stating where they can be seen. The schedules are then retained for two years, open to public inspection, and at the end of that time are either returned to the candidate or destroyed.

The law further declares that electors who are guilty of corrupt practices cannot vote at any elections. If justices, barristers or solicitors are found guilty, they are reported to the proper officers and proceedings are instituted to debar them from office. In the case of the conviction of those to whom licenses have been granted for any purpose, certain officers are obliged to file statements of such convictions and when persons so convicted again apply for licenses, the proper officers may refuse to consider the applications. The registration officers of each county are obliged to keep and publish the full list of all voters disqualified under the terms of the law.

The law provides for the filing of petitions to contest elections within a certain number of days after election and the method of instituting all legal proceedings in connection with the violation of the act.

It is provided that no one shall be excused from testifying in any trial or proceeding in connection with the enforcement of the act on the ground that his testimony will incriminate him. He is given, however, a certificate of indemnity which is a bar to any subsequent proceeding for violations of the law so disclosed.

The law contains a classification of persons who may legally be employed in connection with elections, alloting so many to each burrough, county and polling place. There is then provided a list of legitimate expenses, which includes those of the candidate himself, printing and advertising, stationery, expenses of holding public meetings, providing committee rooms, etc. Expenditures for any other objects than these are absolutely prohibited. A maximum scale of expenses is included in the law, providing that in burroughs not exceeding two thousand inhabitants, not more than three hundred and fifty pounds shall be expended; in burroughs of upwards of two thousand, three hundred and eighty pounds and an additional thirty pounds for every one thousand inhabitants above the first two thousand; in counties not exceeding two thousand inhabitants, six hundred and fifty pounds; in counties of upwards of two thousand, seven

hundred and ten pounds, and sixty pounds additional for every one thousand inhabitants above the first two thousand.

It will be seen that the provisions of this law are far-reaching and the penalties imposed most severe, but such a law was absolutely necessary at the time it was passed. The conditions in England before its passage, in spite of the previous legislation on the subject, were frightful; the expenditures made by candidates incredible. In one election in Yorkshire alone more than £200,000 was spent. In 1826 one candidate is said to have spent £86,000, mostly for "ribbons, music and refreshments." In 1768 in Northampton the patrons of the candidates are said to have spent £100,000 each; so much, in fact, that Lord Halifax was ruined, and Lord Northampton cut down his trees, sold his furniture and went abroad for the rest of his days. Bribery in elections was carried on to a greater extent than ever before in the history of the world; ingenious devices of all kinds were invented for outwitting and evading the exact letter of the law. In 1874 in London this device was arranged for avoiding liability for bribery: A man, disguised as a chimney-sweep, was placed in a chimney; the candidates were ushered into the room where there was an open fireplace connected with the chimney; as each elector walked by the fireplace there dropped from above an orange containing a sovereign.

It was so common in Birmingham at one time to present to electors glasses of beer with sovereigns in the bottom that the practice was known far and wide, and was commonly caller the "Birmingham trick."

Another evil that this law sought to eradicate was "personation." This consists in one man's representing himself to be another, and voting in the name of the man he purports to be. On one occasion it is said that the votes of ninety fishermen were polled, when they were afterwards discovered to have been miles away on the North Sea, and the votes of ten dead men were counted at the same election.

The purposes of the act of 1883, as stated by Henry James, its author, were:

First—To consolidate the laws of England in regard to elections.

Second—To check corrupt practices by punishing and degrading the offenders.

Third—To render detection of offenders certain.

Fourth—To abolish or reduce the extent of paid agencies.

Fifth—To limit the amount of expenditures.

There is little question that these objects were quite fully attained. English writers and statesmen agree that the effect of the law of 1883 has been most salutary. It has been stated that it changed England from one of the most corrupt countries of the world in respect to bribery at elections to one of the purest, and this although few convictions were ever had under the law and in spite of the fact that the officials have made comparatively little exertion in enforcing its terms.

With such a successful example before them it is not strange that certain of the United States should seek to obtain the benefit of legislation so effective in its results.